

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Corrected Copy

76-1417
76-1441

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 76-1417, 76-1441

UNITED STATES OF AMERICA,

Appellee,

—v.—

DANIEL VALERIANO and FRANK KINSLER,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

GOVERNMENT'S APPENDIX

PETER C. DORSEY,
United States Attorney for the
District of Connecticut,
270 Orange Street,
New Haven, Connecticut 06510.



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	PAGE
Appendix I —Application For Wire Interceptions	A-1
Appendix II —Affidavit of Special Agent Raymond Connolly	A-7
Appendix III —Wiretap Order (Murphy, U.S. D.J.)	A-21
Appendix IV —Sealing Order (Clarie, U.S.D.J.)	A-26
Appendix V —Transcript, <i>In Chambers Proceeding</i> , January 29, 1973 (Clarie, U.S.D.J.)	A-27
Appendix VI —Sealing Order (Murphy, U.S.D.J.)	A-39
Appendix VII—Transcript, <i>In Chambers Proceeding</i> , April 25, 1973 (Newman, U.S.D.J.)	A-40
Appendix VIII—Transcript, <i>In Chambers Proceeding</i> , May 22, 1973 (Murphy, U.S.D.J.)	A-57
Appendix IX —Inventory Notice and Order (Blumenfeld, U.S.D.J.)	A-67
Appendix X —Memorandum of Decision, <i>United States v. Valeriano, et al.</i> , N-74-48, D. Conn., filed February 18, 1976 (Zampano, U.S.D.J.)	A-69

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER :
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS :

APPLICATION

PAUL E. COFFEY, Special Attorney, United States
Department of Justice, being duly sworn, states:

This sworn application is submitted in support
of an order authorizing the interception of wire communi-
cations. This application has been submitted only after
lengthy discussion concerning the necessity for such an
application with various officials of the Organized Crime
and Racketeering Section, United States Department of
Justice, Washington, D. C., together with Agents of the
Federal Bureau of Investigation.

1. He is an "investigative or law enforcement
officer -- of the United States" within the meaning of
Section 2510(?) of Title 18, United States Code, that is--
he is an attorney authorized by law to prosecute or participate
in the prosecution of offenses enumerated in Section 2516
of Title 18, United States Code.

2. Pursuant to the powers conferred on him by
Section 2516 of Title 18, United States Code, the Attorney
General of the United States, The Honorable RICHARD G.
HEINRICH, has authorized this application for an order
authorizing the interception of wire communications.
Attached to this application as Exhibit "A" are the letter

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-2-

of notification of approval from the Assistant Attorney General of the Criminal Division, The Honorable HENRY E. PETERSEN, and the memorandum of authorization approved by the Attorney General of the United States, The Honorable RICHARD G. KLEINDIENST.

This application seeks authorization to intercept wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning offenses enumerated in Section 2516 of Title 18, United States Code, that is -- offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business by five or more persons in violation of Connecticut Public Act 865 (1971), which has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit the above enumerated offense in violation of Title 18, United States Code, Section 371, which have been committed and are being committed by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown. Section 803 of Title VIII, entitled Syndicated Gambling, of the "Organized Crime Control Act of 1970", Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, by adding a new section, Section 1955, Prohibition of Illegal Gambling Business. Section 801

-3-

of Title VIII of this act contains special findings that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

3. He has discussed all the circumstances of the above offenses with Special Agent Raymond A. Connolly of the New Haven, Connecticut, Office of the Federal Bureau of Investigation, who has directed and conducted the investigation herein, and has examined the affidavit of Special Agent Connolly (attached to this application as Exhibit "B" and incorporated by reference herein) which alleges the facts therein in order to show that:

(a) there is probable cause to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, have committed and are committing offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business by five or more persons in violation of Connecticut Public Act 865 (1971) which has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit such above-enumerated offenses in violation of Title 18, United States Code, Section 371.

(b) there is probable cause to believe that particular wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn;

Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire communications will concern the receipt and transmission of policy bets and the settling up of said bets by the above-named individuals, and others as yet unknown.

(c) normal investigative procedures reasonably appear to be unlikely to succeed if tried.

(d) there is probable cause to believe that telephone number 203-624-8832 subscribed to by Daniel Valeriano, 58 Dixwell Avenue, New Haven, Connecticut, and telephone number 203-865-5280 subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, have been and are being and will be used in the commission of the offenses set out in paragraph 3(a) above.

4. No previous application has been made to any Judge for authorization to intercept or for approval of interception of wire communications involving any of the same persons, facilities, or places specified herein, except as indicated in the attached affidavit of Special Agent Connolly (Exhibit "B").


Wherefore, your affiant believes that probable cause exists to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, are engaged in the commission of offenses involving the conducting of an illegal gambling business in violation of Title 18, United

States Code, Section 1955, and the use of an illegal gambling business in violation of Title 18, and are conspiring to commit the above-enumerated offense in violation of Section 371, of Title 18, United States Code, that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, have used and are using the telephone subscribed to by Daniel Valeriano located at 58 Dixwell Avenue, New Haven, Connecticut, bearing telephone number 203-624-8802, and the telephone subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, bearing telephone number 203-865-5288 in connection with the commission of the above-described offenses; that communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be intercepted to and from the above-described telephones and that normal investigative procedures appear unlikely to succeed if tried.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Connolly, which is attached hereto and made a part thereof, affiant requests this court to issue an order, pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation of the United States Department of Justice to intercept wire communications to and from the above-described telephones


until communications are intercepted which reveal the manner in which Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, participate in the conducting of an illegal gambling business in violation of Title 18, United States Code, Section 1955 and 371, and which reveal the identity of their confederates, their places and manner of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of that order, whichever is earlier.

It is further requested that this court issue an order pursuant to the power conferred on it by Section (4) (c) of Title 18, United States Code, directing the Southern New England Telephone Company, the common carrier as defined in Section 2510(10) of the United States Code, shall furnish the applicant with all information, facilities and technical assistance to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier furnishes to the person whose communications are to be intercepted. The Southern New England Telephone Company can be contacted by the applicant at the prevailing rates.


PAUL E. CONNELLEY
Special Attorney
U. S. Department of Justice

Subscribed and sworn to before me

this 15 day of July, 1973.


Judge
United States District Court
Eastern District of Pennsylvania

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

APPENDIX II

IN THE MATTER OF THE APPLICATION OF :
THE UNITED STATES OF AMERICA FOR :
AN ORDER AUTHORIZING THE INTERCEPTION :
OF WIRE AND ORAL COMMUNICATIONS :

A F F I D A V I T

Raymond A. Connolly, Special Agent of the Federal
Bureau of Investigation, United States Department of Justice,
being duly sworn deposes and states:

1. I am a Special Agent of the Federal Bureau of
Investigation and have continuously held that position for the
past twenty-five years. I have been assigned to the investigation
of gambling matters within the jurisdiction of the Federal Bureau
of Investigation for approximately five years and during the time
have been involved in more than eighty separate and distinct
gambling investigations. As a result of this experience, I have
had the opportunity to examine the records commonly used by
bookmakers.

2. I am an investigative or law enforcement officer of
the United States within the meaning of Title 18, United States
Code, Section 2510 (7), that is, an officer of the United States
who is empowered by law to conduct investigations of, and make
arrests for offenses enumerated in Title 18, United States Code,
Section 2516.

3. I have been involved in the investigation of the
gambling activities of DANIEL VALERIANO, also known as the "Eep",
since September 8, 1971. As a result of my personal participation
in this investigation and as a result of information furnished to
me by other Special Agents of the Federal Bureau of Investigation
participating in the investigation, I am familiar with the

circumstances of the offenses involved. I therefore, allege the following facts contained in the numbered paragraphs below to show that:

a. There is probable cause for belief that DANIEL VALERIANO, also known as the "Hawk", CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, also known as Catherine Jones, and an individual known only as "ALFIE", and others as yet unknown have been and are now presently engaged in an illegal gambling business which makes use of communications facilities for the purpose of conducting an illegal gambling business which involves five or more persons and that has a gross revenue of \$2,000 in any single day and has been in substantially continuous operation for 30 days. This illegal gambling business is conducted in violation of the Connecticut Public Act 865 (1971) and is thereby in violation of Section 5955 of Title 18, United States Code.

b. There is probable cause for belief that evidence of these offenses will be obtained through the interception of wire communications, authorization for said interception being herein applied for.

c. There is probable cause to believe that telephone number 203-624-8802 subscribed to by DANIEL VALERIANO, 58 Dixwell Avenue, New Haven, Connecticut, number 203-756-0836 subscribed to by Mrs. AURELIA GUIDER, 11 Sinsbury Street, Waterbury, Connecticut, and number 203-865-5238 subscribed to by CATHERINE JONES, 30 Park Lane, Apartment 404, Hamden, Connecticut, have been and are being and will be used in carrying out the offenses set out in paragraph 3(a) above, all of which appears more fully hereafter.

d. Normal investigative techniques such as physical surveillance and examination of the records obtainable regarding DANIEL VALERIANO has failed to gather sufficient evidence and

- 3 -

offers little probability of securing sufficient evidence to sustain prosecution for violation of the offenses and reasonably appear unlikely to succeed. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of Title 18, United States Code, Sections 1955 and 371.

4. This application seeks authorization to intercept wire communications concerning offenses involving violations of Sections 1955 and 371, Title 18, United States Code.

FACTS AND CIRCUMSTANCES

5. From my experience in the investigation of gambling offenses, I know that a policy operation structure consists primarily of a "main bank" that is, the individual running the operation. Under the "main bank" will be "controllers", that is individuals controlling the actual daily "play" and who are in contact with the main bank. Under the controllers are the individual runners, i.e., the men on the street who actually take the policy bets and call these bets into the controller. The "controllers" then tally these bets according to runner, usually using a code designation for each runner rather than the runner's name, for example, "R-2". At the end of the betting day the controller will tally all runners and call these into the main bank. The main bank will keep a daily tally of each controller as to amount of bets accepted, amount won by bettors, i.e. "hits", and amount due to each controller or to the main bank depending upon the number of hits. Usually a settling up is done on a weekly basis. The main bank is usually in contact with only the controllers, who insulate the main bank from the runner who actually accepts the bet.

A policy bet is a bet wherein a bettor selects one or more three digit numbers from 000 to 999. The winning number of the day is determined by totaling the parimutual payoff of the first three races from the nearest class A race track selected

- 4 -

beforehand by the policy operation. The figures to the left of the decimal point separating the dollar from the cent figure is the first number for the day. For example, if the total figure of the winnings of the win, place, and show bets for the first three races was \$326.72, the first policy number would be six. The same total for the fourth and fifth races is added to the first three races to obtain the second policy number and the same total of the sixth and seventh races is added to the first five races in order to obtain the third or last policy number for the day. The bettor can choose to bet all three numbers, two numbers or one number or a combination of numbers, betting from ten cents to any number of dollars. The bettor wins when the number he bets comes out in the order in which he bets them for that day. He may choose to bet a combination of these three numbers, in which case, at lesser odds, he need only pick the three winning numbers in no given order.

Based upon my experience in investigating gambling offenses as set forth in paragraph one, I further know that in the New Haven area of Connecticut, the payoff for a three number hit is "500 to 1", for a two number hit "50 to 1" and for a one number hit "8 to 1". On each hit the runner is entitled to 10% of the hit. For example, if an individual bets \$1.00 and hits the number for \$500 the runner would receive 10% or \$50 and the winner would receive \$450. The coordinators are paid 10% to 15% of all the wages that their runners relay to them.

Investigation as set out in Section 6 below indicates that DANIEL VALERIANO operates a main policy bank in Waterbury, Connecticut, and FRANK GUNN, CHARLES FURMAN, CATHERINE BROWN, and ALPIE (last name unknown) are controllers in this policy operation.

Investigation also reflects that ELLSWORTH BELL is handling a numbers policy operation in the New London, Connecticut, area, and turns his action into an unknown individual in New Haven, Connecticut. Investigation also reflects that there is a large volume

of telephone calls between BELL's residence in New London, Connecticut, and VALERIANO's residence in New Haven, Connecticut.

6. Commencing on or about October 4, 1972, and continuing to the present date, a confidential informant (informant number 1) furnished the following information to Sergeant Vincent DeRosa, New Haven Police Department:

Informant number 1 stated that he has had personal conversations with DANIEL VALERIANO during October, 1972, and during these conversations, VALERIANO stated that his numbers policy action is doing a business in excess of \$25,000 per week.

Informant number one advised that he is personally acquainted with the gambling operation of DANIEL VALERIANO as set forth hereafter.

Informant number 1 advised Sergeant Vincent DeRosa on October 4, 1972, that he had conversations with DANIEL VALERIANO during September, 1972, and during these conversations, VALERIANO told informant number 1 that FRANK GUNN, CHARLES FURMAN, CATHERINE BROWN, and an individual only known as "ALFIE", were coordinators of this policy operation and were subordinates of DANIEL VALERIANO.

Informant number 1 advised on November 10, 1972, that VALERIANO conducts this policy operation from his residence at 58 Dixwell Avenue, New Haven, Connecticut, and utilizes telephone number 624-8802 at this address to contact his subordinates in this gambling operation. Informant number 1 added that VALERIANO told him during the latter part of October, 1972, that he utilizes this location during the morning hours six days a week excluding Sunday and leaves his residence at 58 Dixwell Avenue, New Haven, Connecticut, at approximately 12:00 P.M. each weekday and proceeds

to the City of Waterbury, Connecticut, where he enters a place unknown to the informant, and from which he directs his policy operation. Informant number 1 also advised that during these conversations DANIEL VALERIANO admitted he utilizes "flash paper" in conjunction with his policy operation and distributes "flash paper" to those individuals involved in this operation for the purpose of instantly destroying all evidence thereby avoiding arrest and to avoid the police from ascertaining the identity of the persons involved.

Observations by members of the New Haven Police Department reflect that either DANIEL VALERIANO himself or his vehicle, a 1967 Cadillac bearing Connecticut registration UT203 or both were observed parked in the vicinity of 11 Sinsbury Street, Waterbury, Connecticut, on October 16, 17, 18, 19, 20, 1972, and November 2, 3, 10, 1972, during the afternoon hours.

The Waterbury, Connecticut, City Directory reflects that JOSEPH GUIDER resides at 11 Sinsbury Street, Waterbury, Connecticut, telephone number 756-0836.

Informant number 1 advised Sergeant DeRosa on November 15, 1972, that during the months of October and November, 1972, he has been the recipient of many telephone calls from VALERIANO in Waterbury, Connecticut, during which time he has personally discussed policy business with VALERIANO.

Informant number 1 advised Sergeant DeRosa on November 14, 1972, that during the months of October and November, 1972, he has had numerous contacts with CHARLES FURMAN at telephone number 865-5288, listed to C. JONES, 30 Park Lane, Hamden, Connecticut. Informant number 1 further advised that during the course of these conversations with FURMAN, they discussed VALERIANO's policy operation. Informant number 1 also advised that on these occasions,

- 7 -

FURMAN told him that CATHERINE BROWN, also known to him, informant number 1, as CATHERINE JONES, assisted him at this location in handling his part of the aforementioned policy operation and in his absence, he informant number 1, could freely discuss the policy operation with BROWN. Informant number 1 further advised that FURMAN told him that he was operating an office at this location utilizing telephone number 865-5288 and answers directly to DANIEL VALERIANO. Informant number 1 further advised on November 14, 1972, that he has personally placed policy wagers with FURMAN and BROWN at the above number during October and November, 1972.

The records of the Southern New England Telephone Company reflect that telephone number 865-5288 is listed to CATHERINE JONES, Apartment 404, 30 Park Street, Hamden, Connecticut. Informant number 1 further advised that during the past two months, and as late as November 30, 1972, he has given policy bets to FURMAN and JONES at telephone number 865-5288.

Informant number 1 advised Sergeant DeRosa on November 30, 1972, that DANIEL VALERIANO told him on several occasions during October, 1972, that FRANK GUNN was operating as a controller for him in the aforementioned policy operation in the New Haven, Connecticut, area.

Informant number 1 also advised Sergeant DeRosa on November 15, 1972, that FRANK GUNN told him in November, 1972, that he was operating a policy office for VALERIANO in New Haven, Connecticut. Informant number 1 advised that during September, October, and November, he heard FRANK GUNN and DANIEL VALERIANO discussing the policy operation in his presence. Informant number 1 advised that on these occasions, VALERIANO and GUNN stated that GUNN settles his policy operation with VALERIANO at VALERIANO's residence, 58 Dixwell Avenue, New Haven, Connecticut.

Informant #1 advised Sergeant VINCENT DE ROSA on December 22, 1972, that DANNIE VALERIANO contacted him on December 21, 1972, at which time he stated he, VALERIANO, was in Waterbury, Connecticut, and during the course of this conversation they discussed the policy operation. Informant #1 further advised that VALERIANO at this time told him that he continues to operate his policy operation from his residence at 58 Dixwell Avenue during the morning hours.

Informant #1 advised Sergeant DE ROSA on December 22, 1972 that he was in telephonic contact with CHARLES FURMAN and CATHERINE BROWN at telephone number 865-5288 on December 21, 1972, at which time they discussed the policy operation and at this time FURMAN indicated that he was still utilizing his telephone for gambling purposes and continues to work for VALERIANO.

Informant #1 advised Sergeant DE ROSA on December 22, 1972, that he had personal conversation with FRANK GUNN on this date and GUNN informed him that he continues to accept bets for VALERIANO.

Informant #1 advised Sergeant DE ROSA on December 22, 1972, that ALFIE LNU telephonically contacted him at 1:30 P.M. on December 21, 1972, at which time he, informant #1, furnished to ALFIE the numbers being placed for this particular day.

According to the Sergeant Vincent DeRosa, New Haven Police Department, information provided by Informant Number One has been substantiated and found on each occasion to be accurate and reliable.

Informant number 1 advised Sergeant DeRosa on October 6, 1972, that DANIEL VALERIANO told him approximately six months ago to give all his action to an individual who would contact him telephonically each day and identify himself as "ALFIE". Informant number 1 advised that thereafter an individual identifying himself as "ALFIE" telephonically contacted him at approximately 1:15 P.M. each weekday and on these occasions informant number 1 furnished to "ALFIE" and continues to furnish the policy numbers being placed for that particular day.

Commencing in 1964, and continuing to the present date, a confidential informant (informant number 2) furnished the following information to Sergeant Vincent DeRosa, New Haven Police Department:

Informant number 2 has provided reliable information in the past to Sergeant DeRosa, which information has resulted in three arrests and convictions in gambling matters. Informant number 2 advised on November 21, 1972, that he is personally acquainted with FRANK GUNN and has placed policy bets with him during November, 1972.

7. Records of the Southern New England Telephone Company, 227 Church Street, New Haven, Connecticut, reveal that telephone number 203-624-8802 is subscribed to by DANIEL VALERIANO, 58 Dixwell Avenue, New Haven, Connecticut. Telephone number 203-443-8505 is subscribed to by V. ALLEN, 23 West Street, New London, Connecticut; telephone number 203-756-0836, is subscribed to by AURELIA GUIDER, 11 Simsbury Street, Waterbury, Connecticut; telephone number 203-865-5288 is subscribed to by C. JONES, 30 Park Lane, Hamden, Connecticut, Apartment 404.

8. An analysis of long distance calls charged to telephone number 203-624-8802 subscribed to by DANIEL VALERIANO for the period March 17, 1972, to September 17, 1972, reflects that telephone number 203-443-8505, subscribed to by V. ALLEN was called sixteen (16) times.

- 9 -

An analysis of long distance calls charged to 203-443-8505 subscribed to by V. ALLEN for the period September 1, 1972 to September 30, 1972, reflects that telephone number 624-8802 listed to DANIEL VALERIANO was called 50 times.

An analysis of long distance telephone calls charged to telephone number 756-0836, subscribed to by AURELIA GUIDER, 11 Shashbury Street, Waterbury, Connecticut, reflects that from March 25, 1972, to September 19, 1972, that 95 calls were made to telephone number 288-7558, 90 calls to telephone number 388-0400, 54 calls to telephone number 734-4664, 138 calls to telephone number 734-2662, 107 calls to telephone number 865-9705, and fourteen telephone calls to telephone number 248-2088.

Investigation at New London, Connecticut, reflects that ELLSWORTH P. BELL is currently residing at 23 West Street, New London, Connecticut, with VERONICA ALLEN and is using telephone number 443-8505 at this location.

Commencing in February 21, 1972, and continuing to the present time a confidential informant (informant number 3) furnished the following information to Special Agent Thomas M. Murphy of the New Haven Office of the Federal Bureau of Investigation.

Informant number 3 in the past has provided reliable information which has been confirmed by independent investigation consisting of surveillances, analysis of telephone toll calls and other investigative techniques. Information from informant number 3 and information establishing his reliability, has been received by Special Agent Thomas M. Murphy of the New Haven Office of the Federal Bureau of Investigation. Informant number 3 advised on November 8, 1972, that he is personally acquainted with ELLSWORTH P.

BELL and from conversations with BELL over the past six years up to and including November 8, 1972, BELL has informed him that he is a coordinator of a policy operation in the New London, Connecticut area. During this period of time BELL has told informant number 3 that he has several runners working for him in the New London, Connecticut, area and that he, BELL, supplies these runners with "flash paper" to record the policy bets and that he, BELL, subsequently turns this policy information in to an individual, whom BELL did not identify, in New Haven, Connecticut.

Sergeant Vincent DeRosa, New Haven Police Department, New Haven, Connecticut, on November 21, 1972, advised that the records of that department reveal the following arrests concerning the following individuals.

DANIEL VALERIANO was arrested on September 13, 1948, for keeping lottery tickets and selling lottery tickets. These records further reflected that he was fined in local court \$75.00 and \$100.00 respectively. VALERIANO was arrested by the New Haven Police Department on January 5, 1950, for maintaining premises for the purpose of conducting a lottery, being custodian of horse race bets, and keeping lottery tickets. These records further reflected that he appeared in local court and was fined \$50.00, \$75.00 and \$100.00 respectively for these violations.

CHARLES FURMAN was arrested on December 22, 1969, by the New Haven Police Department for policy playing and on February 11, 1970, in local court he was fined \$500.00. FURMAN was arrested by the New Haven Police Department on October 5, 1971, and December 14, 1971, for policy playing. He appeared in local court on February 4, 1972, and was fined \$1,000.00 for each of these violations.

FRANK GUNN was arrested on September 21, 1960, by the New Haven Police Department for recording bets, policy playing, and keeping lottery records. He appeared in local court on the above violations, receiving a sentence of thirty days and was fined a total of \$250.00 for these violations. GUNN was arrested by the New Haven Police Department on June 8, 1963, for policy playing, and subsequently appeared in local court, at which time he was fined \$100.00 and 30 days suspended sentence and placed on probation for one year. GUNN was arrested on March 10, 1965, by the New Haven Police Department for policy playing, subsequently appeared in local court, at which time he was fined \$200.00 and sentenced to 90 days suspended after 10 days. GUNN was again arrested on June 3, 1968, by the New Haven Police Department for policy playing, subsequently appeared in local court, at which time he was fined \$1,000.00.

CATHERINE BROWN, also known as Catherine Jones, was arrested on August 1, 1968, by the New Haven Police Department for aggravated assault and received a 60 day suspended sentence and placed on probation for two years.

10. My experience and the experience of other agents of the Federal Bureau of Investigation have shown that even though gambling customers are identified they are unwilling to furnish information to law enforcement agents or officials inquiring into gambling activities. This is even more true when the customer is a professional gambler himself. Moreover, interviews and/or Grand Jury subpoenas would only serve to put these individuals on notice of pending investigation and severely reduce the potential success of the investigation. Experience has shown that raids and searches of individuals operating a policy book have not in the past resulted

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in gathering sufficient physical or other evidence to prove all elements of the offenses particularly when individuals involved in the operation do not physically engage in the action of operating the policy action but control and receive proceeds of the operation. Even when records are maintained these records are frequently destroyed immediately prior to a physical search of the premises and usually records which are obtained are coded in order to protect the names of controllers and runners.

The informants mentioned in this affidavit have informed agents of the Federal Bureau of Investigation and officers of the New Haven Police Department that they categorically refuse to testify in any court proceedings because of possible retaliatory tactics which might be taken against them.

11. For the reasons set out above, all normal avenues of investigation are either closed or unlikely to succeed, and the only way to develop the necessary evidence of a violation of Title 18, United States Code, Sections 1955 and 371, by DANIEL VALERIANO also known as the "Hawk", CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, also known as Catherine Jones, and an individual known only as "ALFIE", and others as yet unknown, is to intercept wire communications from (a) telephone number 203-624-8602 subscribed to by DANIEL VALERIANO, 58 Dixwell Avenue, New Haven, Connecticut (b) telephone number 203-756-0836 subscribed to by Mrs. AURELIA GUIDER, 11 Simsbury Street, Waterbury, Connecticut (c) telephone number 203-865-5288 subscribed to by CATHERINE JONES, 30 Park Lane, Apartment 404, Hamden, Connecticut.

12. No other application is known to have been made to any Judge for authorization to intercept, or for approval of interceptions, of wire or oral communications involving any of the persons, facilities, or places specified in this application.

13. The activity to be electronically intercepted is believed to represent a continuing criminal conspiracy involving DANIEL VALERIANO, CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, an individual known only as "ALFIE", and others as yet unknown. Therefore, it is requested that interception of these wire communications not terminate when conversations of a gambling nature are first received until it is revealed the manner in which DANIEL VALERIANO, CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, an individual known only as "ALFIE", and others as yet unknown, participate in the illegal use of interstate telephone facilities for the furtherance of a gambling operation and in aid of racketeering enterprises and until it is revealed the identities of their confederates, the places of operation, and the nature of the conspiracy involved therein or for a period of fifteen (15) days from the date of the order, whichever is earlier.

Raymond A. Connolly
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me

this 15th day of January, 1972.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX III
A 21

APPLICATION OF THE UNITED STATES OF :
AMERICA IN THE MATTER OF AN ORDER :
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS :

ORDER

AUTHORIZING INTERCEPTION OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by Paul E. Coffey, Special Attorney, United States Department of Justice, and an "investigative or law enforcement officer," as defined in Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2512 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, have committed and are committing offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business by five or more persons in violation of Connecticut General Statute 865 (1971) which have been or remain

in substantially continuous operation for a period in excess of 30 days or has a gross REVENUE of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit the above enumerated offense in violation of Title 18, United States Code, Section 371,

(b) there is probable cause to believe that particular wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be obtained through the interception, authorization for which is herewith applied for.

In particular, these wire communications will concern the receipt and transmission of policy betting and settling up of bets by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown.

(c) normal investigative procedures reasonably appear to be unlikely to succeed if tried.

(d) there is probable cause to believe that the telephone subscribed to by Daniel Valeriano,

located at 58 Dixwell Avenue, New Haven, Connecticut, carrying telephone number 203-624-8802, and the telephone subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, and carrying telephone number 203-865-5288 have been and are being used by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, in connection with the commission of the above-described offense.

Wherefore, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Attorney General of the United States Department of Justice, the Honorable RICHARD G. KLEINDIENST, under the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(1) intercept wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning the above-described offenses to and from the telephone subscribed to by Daniel Valeriano, located at 58 Dixwell Avenue, New Haven, Connecticut, bearing the telephone number 203-624-8802, and the telephone subscribed to

-4-

by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, bearing telephone number 203-865-5288,

(2) such interception shall not automatically terminate when the type of communication described above in paragraph "b" has first been obtained, but shall continue until communications are intercepted which reveal the manner in which Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, participate in the conducting of an illegal gambling business, in violation of Title 18, United States Code, Sections 1953 and 171, and which reveal the identities of their confederates, their places and manner of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

Providing that, this authorization to intercept wire communications shall be executed as soon as practicable after signing of this Order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective or, in any event, at the end of fifteen (15) days from the date of this Order.

-5-

Providing also that, PAUL E. COFFEY shall provide the court with a written report on or about the fifth and tenth days following the date of this Order or as often as the court may require showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

It is further ordered upon request of applicant that the Southern New England Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by Southern New England Telephone Company to be compensated for by the applicant at the prevailing rates.

DATE:

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

-vs-

DANIEL VALERIANO

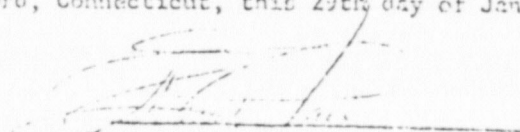
RE: INTERCEPTION OF WIRE COMMUNICATIONSO R D E R

It is hereby ORDERED that all original tape recordings concerning electronic surveillance of wire communications over telephones (203) 865-5288 and (203) 624-8802 between January 17, 1973 and January 27, 1973, be sealed this day until further order of the Honorable Thomas F. Murphy, District Judge.

It is also ORDERED that custody of said recordings be maintained, under seal, by agents of the Federal Bureau of Investigation in an appropriate place until further order of Judge Murphy or of this Court.

With respect to the Progress Report and Return sworn to on January 29, 1973, by Special Agent Raymond A. Connolly of the Federal Bureau of Investigation, at Hartford, Connecticut, and the notes of the court reporter at the in camera proceeding when said return was made, all of the aforesaid documents, to include this Order itself, are ORDERED sealed until further order of this Court or by order of Judge Murphy, the issuing Judge. SO ORDERED.

Dated at Hartford, Connecticut, this 29th day of January, 1973.


United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - x
:
IN RE: APPLICATION OF THE
UNITED STATES OF AMERICA FOR :
ORDER AUTHORIZING INTERCEP- :
TION OF WIRE COMMUNICATIONS :
- - - - - x

JANUARY 29, 1973

HARTFORD, CONNECTICUT

B E F O R E:

HON. T. EMMET CLARIE, U.S.D.J.

IN CHAMBERS

A p p e a r a n c e s:

PAUL E. COFFEY, ESQ.
Special Attorney
Department of Justice
450 Main Street
Hartford, Connecticut

Present:

RAYMOND A. CONNOLLY
Special Agent
Federal Bureau of Investigation

MR. COFFEY: Your Honor, at this time I would like to put on the record that this concerns United States versus Daniel Valeriano, V-a-l-e-r-i-a-n-o.

THE COURT: For the record, will you place on the record who is present?

MR. COFFEY: Yes, your Honor.

Present is Special Agent Raymond A. Connolly of the Federal Bureau of Investigation and myself, Paul Coffey, with the Department of Justice.

What we have to give to your Honor today concerns a return to be made concerning an order authorizing wire interceptions on Mr. Valeriano by Judge Thomas F. Murphy fifteen days ago, and the order expires today.

We went to Waterbury this morning. I believe your Honor will probably indicate in the record as well, that Judge Murphy was unable to be in Waterbury to take the return.

Section 2518 requires that as soon as the wire interceptions are completed a return be made immediately to the Judge issuing the order.

We were going to make the return immediately, and what we intend to do is to have the Court seal

the tapes today and take the return and take a progress report - and I'll get into that in a minute - so that we comply with that part of the statute.

Then on Wednesday, on or about Wednesday, when Judge Murphy is able to get back to his office, we will go to him and indicate to him what transpired so that we comply fully with the statute.

With respect to the return, as your Honor knows from previous Title 3 applications, progress reports are to be made on or about the fifth and tenth days; one-third and two days of the way into the wiretap.

We made the progress report on the fifth day and the progress report to be made on the tenth day fell on the date of mourning of President Johnson. So the Court did not sit in Waterbury on Thursday, nor Friday.

We have the progress report by Agent Connolly as to what transpired the last part of the interceptions also to be made. And I would recommend that Mr. Connolly be placed under oath at this time so he can swear to the progress report and the return.

THE COURT: Very well.

RAYMOND CONNOLLY, being first duly sworn by the Court, was examined, and testified as follows:

THE COURT: Will you give your full name and official position for the record, please?

THE WITNESS: Raymond A. Connolly, Special Agent, Federal Bureau of Investigation, assigned to the New Haven Office.

THE COURT: Do you want to ask any questions now of the witness?

MR. COPPEY: Yes.

BY MR. COPPEY:

Q Agent Connolly, I ask you to identify, do you have in your hands a medium-sized foot-by-foot brown box containing FBI evidence tape; and I would ask you to identify for the record what is contained therein?

A Contained therein is the tapes, the original tapes taken from two telephone intercepts that we've had during the preceding several weeks, two weeks.

THE COURT: And the names and numbers on those intercepts?

THE WITNESS: These intercepts pertained to Telephone number 203-624-8802 subscribed to by Daniel Valeriano, 58 Dixwell Avenue, New Haven,

Connecticut; and Telephone number 203-865-5288 subscribed to in the name of Kathryn Jones at 30 Park Lane, Hamden, Connecticut.

BY MR. COFFEY:

Q I would ask you to take the box which you've just mentioned and write on it "United States versus Valeriano".

A (Indicating).

Q Can you indicate for the record how many tapes are contained therein?

A Thirty-two reels of tape.

Q And are they simply stacked on top of one another, or are they individually bound?

A Each and every one is individually bound and individually sealed.

MR. COFFEY: All right.

Your Honor, at this time perhaps you could ask Agent Connolly to swear to the progress report which relates to the second ten days, the last ten days of the tap.

BY THE COURT:

Q Have you read this report referred to by counsel as a progress report consisting of fourteen pages?

A Yes, I have.

Q And the last sentence thereof says, "On Saturday,

January 27th, 1973, at ten p.m. wire interceptions were terminated over both telephone facilities". Is that correct?

A That is correct.

Q Is all of the information contained herein, or was all of the information contained herein compiled by you as a supervising Special Agent in respect to this particular electronic surveillance?

A Yes, sir, that is correct.

Q And all of the statements contained herein are true, to the best of your knowledge and belief?

A That is correct.

THE COURT: All right. Do you want to sign this, please?

(Document executed by Special Agent Connolly)

BY THE COURT:

Q And there is also here contained a return in the matter of the application of the United States for an order authorizing the interception of wire communications. And you have read this, Agent Connolly?

A Yes, I have.

Q All of the statements contained herein are true, to the best of your knowledge and belief?

A Yes sir.

THE COURT: All right. If you will sign this, please.

(Document executed by Special Agent Connolly)

THE COURT: And so that these may be subscribed and sworn to as the law requires, I would ask that in respect to the return which you just signed and the progress report of electronic surveillance which you just signed, if you will raise your right hand.

(Whereupon, the oath was administered to Special Agent Connolly by the Court.)

THE WITNESS: I do.

THE COURT: Very well.

MR. COFFEY: Your Honor, as I previously indicated, we will go to Judge Murphy, inform him of the procedure we conducted here this morning with respect to inventories and other statutory requirements by the Government. That will be done by us through Judge Murphy, be he here or out in Arizona.

THE COURT: For the record, I think it should be noted that before proceeding with this hearing the Court called Judge Murphy by telephone and verified the fact that because of weather

conditions he had been snowed in at home, so that he was unable to be at the Courthouse to perform his usual official duties and agreed orally that the Court sitting here in Hartford should receive this progress report as of today and should also accept the return of the Government as of today and seal the original tapes as submitted to the Court.

It was represented to him that counsel for the Government would, within the next ----

MR. COFFEY: Several days.

THE COURT: --within the next two days?

MR. COFFEY: Yes, your Honor.

THE COURT: -- contact him and request his further official approval over the procedures followed here today as the original Judge who had ordered the surveillance.

MR. COFFEY: Your Honor, I would request that the stenographic notes and the progress report and the return be sealed in an envelope which says United States versus Valeriano on it and however in the Court's discretion it feels it should be done, that said documents be transferred to Judge Murphy so that he will keep

on file all the papers.

He already has, of course, all the interception applications and orders. We will be seeing him later this week, but perhaps since the tapes belong to the Court and the documents belong to the Court and not to the Government - with respect to the papers: the five-day report, the progress report and the return, that they be given perhaps to the Clerk and then a sealed envelope be transferred to Judge Murphy;

with respect to the tapes, it has been the practice in the past, your Honor, that the Court give the sealed tapes back to the Federal Bureau of Investigation for their custody, with an oral direction by your Honor that said tapes will be kept in an appropriate safe until such time as the Court orders that the box and the tapes be unsealed. And we are prepared to take custody of those tapes and put them in a safe.

I think the documents should go to Judge Murphy, however.

THE COURT: Very well.

The request, or motion is granted. An order may be entered in accordance with counsel's

suggestion or motion.

Should there be a receipt signed by whoever is going to handle these?

MR. COFFEY: Your Honor, the receipt in the past has been the fact that the Court has, in its seal, written across both the seal and the box and that would protect from any reopening;

and the Court's direction, of course, to myself as an officer of the Court, as an officer having custody of the said tape recordings, that they will be kept in an appropriate place and the seal will not be broken.

To my recollection, that is how we have done it in the past.

THE COURT: Very well.

Are you going to prepare any written order to accompany this? It seems to me we did in the last one, so there would be something in the file.

MR. COFFEY: A sealing order, your Honor?

THE COURT: Yes, I think there was a sealing order and I think it was filed authorizing the FBI to hold the evidence in its Evidence Room under their evidence lock.

MR. COFFEY: All right.

THE COURT: It seems to me that was done by Mr. Margolis on the last one I had.

MR. COFFEY: I will prepare such an order, your Honor.

THE COURT: Also that the particular documents that you have recited here - the return and the final progress report - should be ordered sealed together with the minutes of the stenographer.

MR. COFFEY: What I would recommend then, your Honor, is that these two documents and the notes should await my preparation of an order at which time they can all be sealed in an envelope and sent to Judge Murphy.

THE COURT: You can do that this afternoon.

MR. COFFEY: Yes.

THE COURT: A very brief matter.

MR. COFFEY: Right.

THE COURT: Nothing further at this time?

MR. COFFEY: Thank you, your Honor.

THE COURT: Hearing is concluded.

* * *

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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:
IN RE: APPLICATION OF THE
UNITED STATES OF AMERICA FOR :
ORDER AUTHORIZING INTERCEP- :
TION OF WIRE COMMUNICATIONS :
----- x

I hereby certify that the foregoing is
a true and correct transcript of my stenographic
notes in the above-entitled cause taken on
January 29, 1973.

DATED: JUNE 26, 1974. Official Court Reporter

A 39

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

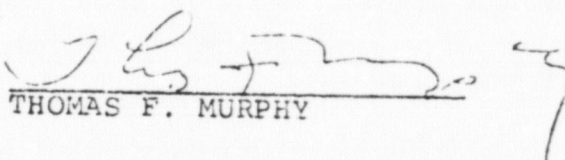
UNITED STATES OF AMERICA :
V. :
DANIEL VALERIANO :

RE: Interception of Wire Communication

ORDER

It is hereby ORDERED that the original copies of a Progress Report and Return of January 29, 1973, sworn to by Special Agent Raymond A. Connolly of the Federal Bureau of Investigation before the Honorable T. Emmet Clarie on the aforesaid date in Hartford, Connecticut, and the notes of the Court Reporter relating thereto, and Judge Clarie's sealing order thereof, shall be made a part of this Court's file of all papers in this case.

All of above mentioned documents to include this Order, shall be sealed until further order of this Court.


THOMAS F. MURPHY

Jan 31 1973
DATE

A 40

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X

UNITED STATES OF AMERICA :

vs. :

Criminal No. N-74-48

DANIEL VALERIANO, ET AL :

In Chambers

-----X

New Haven, Connecticut
Wednesday, April 25, 1973

B E F O R E : HON. JON O. NEWMAN, USDJ

A P P E A R A N C E S:

FOR THE GOVERNMENT:

PAUL E. COFFEY, ESQUIRE
Special Attorney
United States Department of Justice
Hartford, Connecticut

A 41

Appendix VII ²

MR. COFFEY: Your Honor, I should point out that with me this morning is Special Agent Raymond Connolly who is an agent with the FBI. This concerns a service of inventory under Section 2518 of Title 18 on a Title 3 wiretap which Judge Murphy authorized on January 15th of this year.

The tap was on an individual by the name of Daniel Valeriano and other individuals engaged in numbers-bookmaking operation. The 90-day period in which inventory has to be served under the statute runs out tomorrow.

I contacted Judge Murphy's office because the statute says that the judge who authorized the interception has to order the service of inventory; however, Judge Murphy is on vacation in Mexico and his office does not know exactly where he is and I think quite clearly the statute, although it does not provide explicitly, Congress must have intended and we feel it did intend that if the judge for any reason is unavailable then any other judge in the District could allow for service of inventory or any extension.

What I would like to do this morning is place Mr. Connolly under oath. He is the case agent in this case. He conducted and supervised the

A 42

1 interception between January 17th and January 27th,
2 and after which I would like to have Mr. Connolly say
3 what steps he has taken to identify the participants
4 and why we need the 30-day extension of service of
5 inventory. I would request the Court to place
6 Mr. Connolly under oath.
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RAYMOND CONNOLLY, called as a witness,
having been first duly sworn by Gerald Gale, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q Agent Connolly, you are the case agent on the
interception of Daniel Valeriano between the 17th and the 27th of
January, is that correct?

A Yes.

Q Following the termination of interception on January
27th, what steps did you take to determine what individuals have
been monitored but not identified originally on the wiretap?

A A short time after the intercepts were terminated,
the tapes were given to a stenographer and she typed these up
which took approximately six weeks to get the completed tapes.
After this they were analyzed in an effort to determine the
identity of the other individuals involved in this gambling
operation.

Q Did there come a time when you made a subsequent
application to the Federal Bureau of Investigation in Washington
for a follow-up wiretap?

A That is correct.

Q For whom did you apply for that particular wiretap?

A We applied for two telephone numbers, one listed to

a Marie Amendola and the other listed to a Michael Celentano.

Q Was an individual intercepted on the first wire intercept by the name of Alfie?

A That is correct.

Q What telephone facility was Alfie using?

A He was using the telephone subscribed to by Marie Amendola.

Q Was Alfie ever identified?

A No, he has not been identified.

Q Were the other individuals who were bookmaking or helping to run the numbers operation with Mr. Valeriano identified except for Alfie?

A They have all been identified except for Alfie.

Q Was Mr. Celentano definitely identified?

A He was identified. The intercept reflected that a Mike was discussing gambling operations with Valeriano and the phone at that residence was subscribed to by Michael Celentano.

Q What was the purpose of requesting an interception over the Amendola phone being used by Alfie?

A The information derived from the first telephone intercept from Valeriano's resident indicates that Alfie is operating as a controller in this gambling operation.

Q Are there any investigative techniques which were available to you or are presently available to you to identify

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SANDERS, GALE & RUSSELL
FEDERAL BUREAU OF INVESTIGATION

205 CHURCH STREET
NEW HAVEN, CONNECTICUT

1 Alfie in this bookmaking operation except for wire intercepts?

2 A No, it is not.

3 Q What happened to your application to the Federal
4 Bureau of Investigation in Washington?

5 A Well, it was forwarded to the Federal Bureau of
6 Investigation in Washington, approximately two weeks ago, and
7 they returned it advising they did not feel that there was
8 sufficient probable cause at this time to go on those two
9 particular numbers.

10 Q If they had approved of the application two weeks
11 ago, what was your intent with respect to applying to the Court
12 for wire intercept at that time?

13 A The purpose would be to request of the Court on
14 those two telephone numbers, one used by Alfie and one used by
15 Michael Celentano.

16 Q Before the inventory was due on this particular
17 matter?

18 A That is correct.

19 Q Do you know what was the reaction by the Criminal
20 Division of the Department of Justice concerning your application?
21 Have you been informed?

22 A I have been informed by Mr. Coffey that the Depart-
23 ment feels that there is sufficient probable cause in the Affidavit
24 to proceed on one of the two numbers requested, that being the

A 46

one used by Alfie.

MR. COFFEY: I should point out at this time, your Honor, there is a conflict in the Department. They have some legal advisors in the Federal Bureau of Investigation who advise the FBI agents whether or not there is probable cause. If they feel there is at that time the Director, in this case the acting Director of the FBI, sends a memo to the Criminal Division requesting an application. The Criminal Division cannot act until they receive that memorandum. I've been advised by the Special Operations Unit of the Organized Crime Section that in their opinion there is probable cause to go on Alfie on the Amendola phone; however, even though we feel there is probable cause we can't act unless the acting Director gives us a memorandum, we can't get one from the acting Director at this time. As a result we can't go any further --

THE COURT: Whose rule is that?

MR. COFFEY: It is the Bureau's rule. Apparently at the time this policy was set up, I have no first-hand knowledge of it, but as I understand it we will not go forward unless the FBI makes a formal request as to the application.

I hope I'm not misstating the police because I didn't help make it and I have never been really --

THE COURT: You mean you have a situation where the Organized Crime Division believes that they have sufficient grounds to apply to the judge for a wiretap?

MR. COFFEY: That's correct.

THE COURT: But they are not doing so because the FBI doesn't agree with that legal assessment?

MR. COFFEY: In effect, that's what I have been informed, your Honor, and the reason is that that sending the papers to the Attorney General's Office is a formal application by the acting Director under his signature requesting that the application be made, with the first step formally in the application procedure is to request from the Bureau, so I sent the application preliminarily to get the ball rolling but the first step is a notification by the FBI.

They don't feel that right now there is enough probable cause to indicate that Alfie is using this phone at this time. That is the kicker.

1
2 We feel --

A 48

3 THE COURT: The "they" in that
4 sentence is the FBI?

5 MR. COFFEY: Yes. This has never
6 happened before. It's completely unexpected. We
7 are trying to resolve the problem, as I think you
8 can imagine, right now. We had hoped to be on the
9 follow-up wire interception prior to the 90-day
10 period. That's one of the reasons why we find our-
11 selves in a situation right now. That obviously
12 we are not going to get the approval by tomorrow
13 and as the Court is probably aware, a willful failure
14 to file the inventory without an extension would
15 completely nullify our first interception and I
16 don't want that to happen, so there is only two ways
17 we can go.

18 We can get an extension until such time as
19 we can work out the difference of opinion in the
20 Department or file the actual inventory.

21 THE COURT: Is there any continuing
22 investigation going on to buttress the probable
23 cause?

24 MR. COFFEY: Yes, your Honor. Let me
25 tell you where we are right now. If there are any

A 49

questions from Mr. Connolly, if I state anything incorrectly he can correct me. There's only one informant in this case and that informant has stated that he knows the operation is continuing and it has been stated to him by Mr. Valeriano that the operation is the same and the participants are the same as back in January at the time that we intercepted Alfie and Valeriano and the other individuals actually on the wire.

The informant cannot state that he knows Alfie is using a particular telephone facility, the one that we want to get on.

The best he can do is to say as to Valeriano, the operation is the same. The informant can state that Alfie is in the operation and is in fact helping to conduct the operation but he can't say what facility.

The Bureau apparently feels that although that's probable cause that Alfie is still in the operation, it's not probable cause that he is using the facility that we want the wiretap.

I feel and the Department feels that if in fact we definitely identify Alfie as using this facility and we definitely identify it right

A 50

now, the operation is still in existence and the chief operator of that operation at the level we are at right now states that the operation is still the same and that the participants are still the same, then at least there's at least probable cause to believe that the facility is still the same.

THE COURT: You are not asking me to rule now whether there is probable cause?

MR. COFFEY: No.

THE COURT: For a tap on that line?

MR. COFFEY: No, but that's where the FBI and the Department of Justice vary.

THE COURT: I want to understand. Is there any current investigation, a purpose of which is to develop evidence to make it more certain that this Affie is using that line; in other words, is the delay to gather evidence or is the delay to resolve what is essentially a bureaucratic disagreement?

MR. COFFEY: It's a little bit of both. We have to get the evidence to resolve the bureaucratic hassle. At the time we sent our application down to the Department, the latter information I told you about, the informant's, that

A 51

Alfie was still in the operation, was not contained therein. We got that by going out and speaking to the informant after this disagreement --

THE COURT: That's been done?

MR. COFFEY: That has been done.

THE COURT: Is there anything currently happening designed to add to the probable cause?

MR. COFFEY: I would like to ask Mr. Connolly if he can answer that.

BY MR. COFFEY:

Q What is being done in addition to that or what can be done?

A This informant is still in daily contact with the operation and he is in contact with these people. He has known Alfie for an extended period of time but he does not know what phone Alfie is using and he calls him each and every day. Alfie calls into the informant at which time the informant relays all the numbers to Alfie but Alfie has never indicated to the informant the location of this particular phone.

We have been in contact with the informant and he is making efforts at this time to determine this phone. I don't know whether -- the location of this particular phone. I don't know whether he will be successful or not.

A 52

Q Is this a local operation in which the phone calls from the informant to Alfie or from Alfie to Valeriano are reflected in toll call records?

A The calls from Alfie to the informant are not toll calls.

Q Would the call from Alfie to Valeriano be a toll call or local call?

A Local call.

Q Are there any witnesses who would testify before this Court or in the Grand Jury that they know Alfie is using this telephone facility?

A None that I know of at this time.

Q Would your surveillance indicate or has surveillance indicated that Alfie is at this residence where the facility is located?

A This residence is a one-story ranch style type home and the occupants of it are Mr. and Mrs. Amendola. We still have no knowledge as to the identify of Alfie. There is speculation that it could be Mr. Amendola but we don't know.

Q Do you know who Alfie is?

A No, I do not.

THE COURT: The continuing investigation, at least a part of it, is apparently to see if the

A 53

informant can identify what line Alfie is using; is that right?

THE WITNESS: That is correct, yes.

THE COURT: Is it also a part of that investigation to see if the informant can determine whether or not Alfie uses the phone you wish to intercept?

THE WITNESS: That is correct.

THE COURT: You want a 30-day extension of the service --

MR. COFFEY: Yes, your Honor. I should also point out that later there is no problem in the court proceeding where these minutes may be made available to the defense. The Organized Crime Section has not made a formal decision to go ahead because there has been no memo so when I say that the Organized Crime Section has approved this, what I mean is that the Special Operations Unit, which has several attorneys, who do nothing but who handle these things for probable cause, that I have been informed by one of them, John Burg, that he is handling this one, that it has probable cause in his opinion. It is his recommendation to his superiors out of that unit that it be accepted but, of course,

there will be no further steps taken until the memo is received from the FBI.

THE COURT: Anything else?

MR. COFFEY: No, your Honor. I would request in any event, however, the Court resolve our request that the minutes of the Court Stenographer be sealed; all these proceedings be placed in an envelope and possible transferred to Judge Murphy at the time he returns because I intend hopefully to have any future proceedings before Judge Murphy to keep it consistent with how we originally started the Court proceedings.

THE COURT: Your application under Title 18, Section 2518 --

MR. COFFEY: 8D.

THE COURT: 8D, can be made to a judge of competent jurisdiction, and while I agree with you, it would normally be preferable to be issued by the judge, the circumstances you state would justify your presenting it to any other judge of this District Court.

As far as the requirement of good cause, the evidence presented here of the type of continuing investigation and its purpose, I find is sufficient

1
2 to justify a 30-day delay in the service of the
3 inventory.

4 Frankly, I am doubtful that difficulties
5 within the Department in resolving who has the
6 authority would warrant such a delay but since the
7 investigation is continuing and it is a purpose --
8 and a purpose of it is to add to the indications
9 you already have that this Alfie is using the line
10 you want to tap, that is sufficient to delay service,
11 but I think the Department ought not to be in the
12 position of seeking extension of time limits because
13 of its own inability to reach a decision if your
14 investigation were completed, which apparently it's
15 not in this case.

16 The statute seems to make it clear that
17 the basic title 3 applications are to be made by
18 the Attorney General or on the approval of the
19 Attorney General or his authorized Assistant Attorney
20 General and doesn't seem to require the concurrence
21 of the FBI.

22 So for the reasons I have stated I
23 will grant your request for a 30-day extension for
24 service of the inventory.

25 MR. COFFEY: Thank you.

A 56

THE COURT: The minutes may be sealed
as requested.

(Whereupon, the hearing was
adjourned.)

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

-----X
UNITED STATES OF AMERICA:

VS.

:

CRIMINAL No. N-74-48

VALERIANO, ET AL
-----XB E F O R E: THE HONORABLE THOMAS F. MURPHY,
UNITED STATES DISTRICT JUDGEIN CAMERA HEARING HELD ON MAY 22, 1973AT WATERBURY, CONNECTICUT

A P P E A R A N C E S:

PAUL COFFEY, ESQUIRE
Special Attorney
450 Main Street
Hartford, Connecticut

For the United States of America

MR. COFFEY: Good morning, Your Honor.

Your Honor, I state for the record that with me is Agent Raymond Connolly of the FBI.

The purpose of our being in front of you this morning is, first, to inform Your Honor of events which have taken place since this Court sat out in Arizona with respect to our previous Title 3 application which this Court granted on Daniel Valeriano. The 90 day service period notice which is required under Section 2518 (a) (d) of Title 18 was due on a wiretap authorized by this Court on April 26, 1973. At that time, this Court was sitting in Arizona or on vacation. I don't recall which. But in any event, we went to Judge Newman and Judge Newman authorized an extension of that inventory under Section 2518 for 30 days until May 25 which is, I believe, this Friday.

The purpose of Agent Connolly's presence this morning as well as my own is to inform the Court that we are going to apply at this time for two matters -- for two items, one of which is a pen register device, and second of which is an extension of the service of inventory for 45 days to enable us to use the results of the pen register as probable cause for a subsequent wiretap on an individual by the name of Alfie.

I should apprise the Court, first of all,

1 with respect to the services of inventory, Section 2518
2 (a)(d) does authorize this Court in its discretion to
3 delay services of inventory for reasonable purposes;
4 and Agent Connolly's affidavit, I think, will show
5 that the purpose of the delay is continuing investigation.

6 With respect to a pen register device, a pen
7 register device is not an interceptive device in the
8 meaning of Title 3, and the authority I have for this is
9 United States vs. Focario, which is a District Court
10 in Maryland case decided in 1972. I have the cite here.
11 It's 340 F. Supp. 1033, which affirmed under the name
12 of United States vs. Giordano by the Fourth Circuit
13 in 1972.

14 THE COURT: Have you got that citation?

15 THE CLERK: I have the C.L.R. cite. I believe
16 the C.L.R. cite is 12 C.L.R. 2004.

17 MR. COFFEY: I do believe it is reported
18 and I can probably get the --

19 THE COURT: What is the District Court?

20 MR. COFFEY: 340 F. Supp. 1033. I might
21 point out, Your Honor, that the Giordano case is very
22 famous, it is now before the United States Supreme Court,
23 throughout the wiretaps because of the authorization
24 procedures. However, this Circuit has affirmed that
25 procedure. However, the lower Court case dealt, among

1 other things, with the pen register question and
2 stated that the only requirement is that it be normal
3 probable cause requirements like any search.

4 I have here an application by me which I
5 should sign in the Court's presence, seeking the pen
6 register device and Agent Connolly has an affidavit,
7 and I would ask the Court to put Mr. Connolly under
8 oath so if the Court has any additional questions
9 concerning the probable cause for the pen register,
10 it can do so. I also have a prepared order, Your Honor,
11 which would authorize the use of this pen register
12 and a small order which directs the Southern New England
13 Telephone Company to provide whatever technical
14 assistance is required to the FBI for this procedure.

15 THE COURT: All, wait until I read
16 Mr. Connolly's affidavit.

17 MR. COFFEY: All right.

18 THE COURT: What is the crime of pool selling
19 in Connecticut? Is that something like running a lottery?
20 You say that the New Haven Police record indicates that
21 Celantano was arrested in 1958 on the charge
22 of pool selling.

23 AGENT CONNOLLY: It is my understanding,
24 Your Honor, that this is a term used for the selling of
25 daily lottery tickets.

1 THE COURT: And is it a crime in Connecticut
2 also for the player to be in violation of the law on
3 policy players?

4 AGENT CONNOLLY: It is my understanding it
5 is, Your Honor.

6 THE COURT: All right. Mr. Connolly, will
7 you sign it and do you swear that the affidavit is the
8 truth to the best of your knowledge and belief?

9 AGENT CONNOLLY: I do.

10 THE COURT: All right. I have signed both
11 orders.

12 MR. COFFEY: Your Honor, may I request that
13 the notice of the pen register search be made at the
14 same time that service of inventory has been delayed,
15 that is, 45 days to the signing of this order. My
16 request is based on my belief that if the Court were
17 to require a shorter service of the notice of the use
18 of the pen register, it would take from underneath us
19 the whole purpose of obtaining the pen register and
20 that is to establish probable cause that this particular
21 phone used by Alfie is still in use with him at this
22 time, so we can apply within 45 days to the Court if
23 the pen register is successful for a subsequent wiretap.

24 THE COURT: Well, that is agreeable to me, but
25 what is the beginning date of the pen register apparatus?

1 Is it the date that Judge Newman granted or is it
2 going to start as of today because then it will be
3 longer than the 45 days you ask for?

4 MR. COFFEY: Well, I would ask Agent Connolly.
5 The order would state that the pen register starts
6 today and it had not occurred to me. I was thinking
7 of the 45 day period beginning today. I would like to
8 ask Agent Connolly if he believes that.

9 THE COURT: I think it's best that they all
10 are coordinated so that they begin and end on the
11 same time.

12 AGENT CONNOLLY: I would think so.

13 MR. COFFEY: I might point out to the Court
14 the reason I ask for 45 days is to give us 15 days
15 on top of the normal 30 day extension.

16 THE COURT: Do you want time to run from
17 today for the extension or from the date of the expiration
18 of the extension that Judge Newman gave?

19 MR. COFFEY: I would request, if the Court
20 would permit it, that the 45 day period run from the
21 end of the expiration of the pen register -- use of
22 the pen register.

23 THE COURT: That's for the filing of the
24 inventory?

25 MR. COFFEY: As well.

1 THE COURT: As well as the use of the pen
2 register.

3 MR. COFFEY: Yes, Your Honor.

4 THE COURT: So that in reality, if you start
5 today, it is a little bit more than 45 days.

6 MR. COFFEY: Yes, Your Honor. I don't
7 anticipate we will take the whole 15 days, and I will
8 inform the Court we will make a return to the Court
9 probably within a week of the use of what results
10 we have with the pen register.

11 THE COURT: I'm wondering now, do the orders
12 now provide for that time as you explained it?

13 MR. COFFEY: The order simply provides
14 that the pen register will terminate the end of 15 days.
15 It does not provide --

16 THE COURT: So it will be 15 days from today.

17 MR. COFFEY: That is correct, Your Honor.

18 THE COURT: Very well. All right.

19 MR. COFFEY: I would request, Your Honor, that
20 the stenographic notes and all the orders in this case
21 be sealed except for one copy of a signed order to be
22 given to Agent Connolly to present to the Southern
23 New England Telephone Company so they will provide the
24 assistance necessary.

25 THE COURT: So ordered.

1 MR. COFFEY: I would also recommend to the
2 Court that it inquire or have me inquire what should be
3 done with respect to the sealed extension and the
4 stenographic notes of the application that we had
5 before Judge Newman which he indicated --

6 THE COURT: Why not keep them all together
7 and give it to me and I will keep them with the other
8 papers.

9 MR. COFFEY: But I don't know whether I
10 should do that since they are now in the custody of
11 the Court. I would recommend that Your Honor get in
12 touch with Judge Newman and have it transferred to you.

13 THE COURT: I think you can do it just as good.
14 Ask him if he wants to verify it, he can call me.

15 MR. COFFEY: All right.

16 THE COURT: This blank in the order about --
17 I forget the name of it.

18 MR. COFFEY: I don't think it's necessary,
19 Your Honor. I drafted that order up, but I should know --
20 normally, we simply have it on the record that all papers
21 be sealed and that's sufficient, and kept in the custody
22 of this Court until further order of this Court.

23 THE COURT: Why can't I fill in the blank and
24 say "This case --"

25 MR. COFFEY: Well, United States vs. Valeriano

1 should do it, Your Honor. That way we will know what
2 we are talking about.

3 THE COURT: Do you want to spell it again
4 for me?

5 MR. COFFEY: V-a-l-e-r-i-a-n-o.

6 THE COURT: Very well.

7 MR. COFFEY: Thank you, Your Honor.

8 * * * * *

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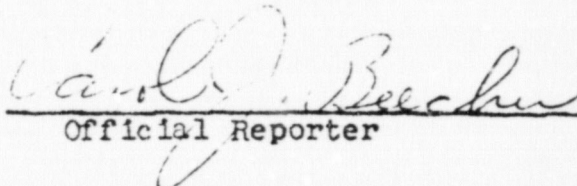
25

A 66

C E R T I F I C A T E

I hereby certify that the within and foregoing
is a true and complete transcript of the stenographic
notes taken by me on May 22, 1973 at the United States
District Courthouse in Waterbury before The Honorable
Thomas F. Murphy, United States District Judge.

Dated this 26th day of July 1974 at New Haven,
Connecticut.


Official Reporter

United States Department of Justice

APPENDIX IX

IN REPLY REFER TO PEC:pam

UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT
430 MAIN STREET
HARTFORD, CONNECTICUT 06103

A 67

July 10, 1973

REGISTERED MAIL
RETURN RECEIPT REQUESTED

To: Daniel Valeriano
58 Dixwell Avenue
New Haven, Conn.

Catherine Jones
30 Park Lane
Apt. 404
Hamden, Conn.

Frank Gunn
47 Dix Street
West Haven, Conn.

Charles Furman
30 Park Lane
Apt. 404
Hamden, Conn.

Michael J. Celentano
3 Roosevelt Street
New Haven, Conn.

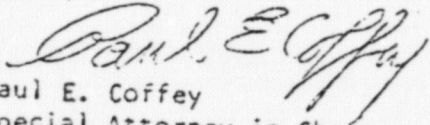
Re: Application of the United States of America in the
Matter of an Order Authorizing the Interception of
Wire Communications

Inventory

Please be advised that on January 15, 1973 the Honorable Thomas F. Murphy, United States District Judge for the District of Connecticut, signed an Order authorizing the interception of wire communications, which Order authorized said interceptions for a fifteen-day period.

During the period between January 17, 1973 and January 27, 1973 certain wire communications made by you over telephone numbers 203-865-5288 and 203-624-8802 were intercepted by agents of the United States of America, acting pursuant to said Court Order. The violations specified in the above Order were Title 18, United States Code, Sections 1955 and 371.

Very truly yours,


Paul E. Coffey
Special Attorney in Charge
Organized Crime Field Office
Hartford, Connecticut

A 68
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Appendix IX

IN RE APPLICATION OF THE
UNITED STATES OF AMERICA
IN THE MATTER OF AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS

ORDER

IT is hereby ORDERED, ADJUDGED and DECREED that on or before July 16, 1973 Paul E. Coffey, Special Attorney, United States Department of Justice, shall cause the service of inventory required by Title 18, United States Code, Section 2518(8)(d), to be made upon

Daniel Vaieriano
58 Dixwell Avenue
New Haven, Conn.

Charles Furman
30 Park Lane
Apt. 404
Hamden, Conn.

Michael J. Celentano
3 Roosevelt Street
New Haven, Conn.

Catherine Jones
30 Park Lane
Apt. 404
Hamden, Conn.

Frank Gunn
47 Dix Street
West Haven, Conn.

by depositing copies of said inventory, postage prepaid, in the United States Mail, Registered Mail, Return Receipt Requested, and directed to each of the aforesaid persons at his or her current address.

It is further ORDERED, ADJUDGED and DECREED that Paul E. Coffey shall file the original of said inventory with the Court on July 16, 1973 and that he shall file on or about August 16, 1973 all of the Return Receipt Requests relating to each recipient of notice.

M. Joseph Blumenthal
UNITED STATES DISTRICT JUDGE

Entered at Hartford, Connecticut

this 15th day of July, 1973.

BEST COPY AVAILABLE

FEB 24 1976

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

UNITED STATES OF AMERICA :

v. :

CRIMINAL NO. N-74-48

DANIEL VALERIANO, CHARLES FURMAN,
CATHERINE BROWN, a/k/a Catherine
Jones, CLIFTON ADAMS, ELLSWORTH
BELL, FRANK KINSLER, FRANK AMENDOLA,
a/k/a "Alfie"

FILED
FEB 18 9 37 AM '76
U. S. DISTRICT COURT
HARTFORD, CONN.

MEMORANDUM OF DECISION

In this two-count indictment filed on May 3, 1974, the seven defendants are charged with violating and with conspiring to violate the federal gambling statutes, 18 U.S.C. §§ 1955 and 371. As is typical in § 1955 cases, the defendants level broad constitutional and statutory attacks against the indictment and wiretap evidence obtained under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520. In addition, defendant Brown moves to suppress her grand jury testimony, and defendant Bell challenges the search of his home by agents in July, 1973. Finally, the defendants have filed various motions for discovery.

I. The Motions To Dismiss

A. Most of the arguments advanced by the defendants in support of their motions to dismiss are foreclosed by Judge Blumenfeld's reasoned opinion in United States v. Chiarizio, 388 F. Supp. 258 (D. Conn.), *aff'd*, ____ F.2d

_____ (2 Cir. November 11, 1975). Thus, § 1955 is constitutional; the doctrine of pardon and abatement does not bar the prosecution; and, there is no infirmity in the conspiracy count of the indictment based on an application of "Wharton's Rule." Id. at 862-863; see also United States v. Sacco, 491 F.2d 995 (9 Cir. 1974); United States v. Becker, 431 F.2d 230 (2 Cir. 1972), vacated on other grounds, 417 U.S. 903 (1974); State v. Genova, 141 Conn. 565 (1954). Further, since the indictment alleges that the defendants committed certain acts with respect to an illegal gambling business "involving a numbers or policy operation" during a specific period, the use of the term "bookmaking" does not render the indictment vague or legally insufficient. Cf. United States v. DeCesaro, 54 F.R.D. 596, 597 (E.D.Wis. 1972). The indictment contains the requisite specificity to enable the defendants to prepare their defenses and to avoid the danger of being prosecuted again for the same conduct. United States v. Debrow, 346 U.S. 374 (1953).

B. As a further ground for dismissal, the defendant Kinsler severely criticizes the role of a prosecutor in presenting evidence to a grand jury and suggests that the Magistrate's duties be expanded to include that "of the court's attorney before the grand jury." The defendant's arguments are conclusory in nature, have little or no relevance to the case at bar, and are contrary to controlling

law. The government attorney is specifically authorized to appear before a grand jury, Rule 6(d), F. R. Crim. P., and his presence is recognized as essential "to the fact presentation process by which the grand jury reaches its ultimate decision." United States v. Cooper, 464 F.2d 648, 653, (10 Cir. 1972). Moreover, "[a] grand jury proceeding is not an adversary hearing in which the guilt or innocence of the accused is adjudicated," United States v. Calandra, 414 U.S. 338, 343 (1974); therefore, there is no requirement that the prosecutor submit to the grand jury all of the evidence in the government's file. Lorraine v. United States, 396 F.2d 335, 339 (9 Cir.), cert. denied, 393 U.S. 933 (1968); Addonizio v. United States, 313 F. Supp. 485, 495 (D.N.J. 1970), aff'd 451 F.2d 49 (3 Cir.), cert. denied, 405 U.S. 936 (1972).

C. Defendants Brown, Adams, and Furman contend that the indictment must be dismissed as against them because there has been an alleged violation of a policy statement issued by the Department of Justice in 1959 which states: "After a state prosecution there should be no federal trial for the same act or acts unless the reasons are compelling." The short answer to this contention is that there has been no duplication of prosecution here. While it is true that each of the defendants was prosecuted and convicted of "policy playing" on a single day under Connecticut law, Conn. Gen. Stat. § 53-208, the federal statute with which we are concerned prohibits an illegal gambling business of

major proportions involving five or more persons, and one in substantially continuous operation for at least 30 days or with a gross reserve of \$2,000 in any single day. Cf. United States v. Ceraso, 467 F.2d 653, 658 (3 Cir. 1972). Also, the penalties under state and federal law significantly differ: the state statute provides for a maximum of six months imprisonment or \$100 fine, or both, while the federal enactment carries a maximum of five years incarceration or \$20,000 fine, or both.

In any event, even assuming there has been a breach of a policy set some years ago by the Justice Department, the defendants point to no statute, rule or regulation that has been breached. As Justice Brennan noted in Petite v. United States, 361 U.S. 529, 533, "the government has reserved the right to apply or not to apply its 'policy' in its discretion."

II. The Motions To Suppress

A. All of the defendants move to suppress the wiretap evidence secured by agents of the Federal Bureau of Investigation. They first allege that the affidavit submitted by Agent Connolly in support of the wiretap application was deficient in that (1) the reliability of the informants was not sufficiently established on the face of the affidavit, and (2) the information set forth was "double hearsay" because it was relayed to Agent Connolly through other law enforcement officers.

It is well established that a magistrate cannot issue

a valid search warrant based on an affidavit which contains information supplied to the police by an unidentified informant unless the affidavit states "some of the underlying circumstances from which the officer concluded that the informant . . . was credible or his information reliable." Aguilar v. Texas, 378 U.S. 108, 114 (1964). See also Spinelli v. United States, 393 U.S. 410 (1969); United States v. Canestri, 518 F.2d 269 (2 Cir. 1975). In the instant case, the affidavit recites that the "information provided by Informant Number One has been substantiated and found on each occasion to be accurate and reliable", that Informant Number Two "has provided reliable information in the past to Sergeant DeRosa, which information has resulted in three arrests and convictions in gambling matters", and that Informant Number Three "in the past has provided reliable information which has been confirmed by independent investigation consisting of surveillances, analysis of telephone toll calls and other investigative techniques." These recitals are sufficient to show the trustworthiness of the informants and to justify reliance on their statements. United States v. Sultan, 463 F.2d 1066, 1068-1069 (2 Cir. 1972); United States v. Dunnings, 425 F.2d 836, 839 (2 Cir. 1970), cert. denied, 397 U.S. 1002 (1970).

It is true, as the defendants point out, that Agent Connolly did not personally receive the information from the informants. Rather, each informant relayed information to a named police officer who, in turn, transmitted the information

to Agent Connolly. While the use of double hearsay in a wiretap application is not to be encouraged, it does not automatically render the affidavit fatally defective.

United States v. Fiorella, 468 F.2d 688, 691-692 (2 Cir. 1972). The test to be applied is whether the information furnished by each informant, taken in the light of the totality of the circumstances, can reasonably be said to be reliable. Id. Here, as stated, the informants had previously given accurate information to the police. In addition, the informants with considerable detail related their personal observations of and contacts with the defendants and extensively described admissions of criminal activity by the defendants. The separate accounts of the three informants tend to corroborate each other and independent investigations by local police and federal agents confirmed several material aspects of the informants' reports. Under these circumstances, the affidavit must be deemed sufficient to support a finding of probable cause for the wiretap order. See United States v. Harris, 403 U.S. 573 (1971); Aguilar v. Texas, supra; Jones v. United States, 362 U.S. 257 (1960); United States v. Welebir, 498 F.2d 346 (4 Cir. 1974); United States v. Fiorella, supra; United States v. Steed, 465 F.2d 1310 (2 Cir.), cert. denied, 409 U.S. 1073 (1972); United States v. Sultan, supra; United States v. Fantuzzi, 463 F.2d 683 (2 Cir. 1972); United States ex rel. Cardaio v. Cass, 416 F.2d 632 (2 Cir. 1971).

B. The defendants next argue that the wiretap

application did not include the requisite "full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(1)(c). See also 18 U.S.C. § 2518(3)(c). In support of their position, the defendants cite the conclusory language contained in paragraph 3(d) of the affidavit which merely asserts that normal investigative techniques such as physical surveillance and examination of records have failed to uncover sufficient evidence to sustain a prosecution; and, therefore, "the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of Title 18, United States Code, Sections 1955 and 371."

This argument overlooks the factual explanation on pages 11 and 12 of the affidavit concerning the difficulties in employing conventional investigative techniques to the present case. Paragraph 10 of the affidavit reads:

My experience and the experience of other agents of the Federal Bureau of Investigation have shown that even though gambling customers are identified they are unwilling to furnish information to law enforcement agents or officials inquiring into gambling activities. This is even more true when the customer is a professional gambler himself. Moreover, interviews and/or Grand Jury subpoenas

would only serve to put these individuals on notice of pending investigation and severely reduce the potential success of the investigation. Experience has shown that raids and searches of individuals operating a policy book have not in the past resulted in gathering sufficient physical or other evidence to prove all elements of the offenses particularly when individuals involved in the operation do not physically engage in the action of operating the policy action but control and receive proceeds of the operation. Even when records are maintained these records are frequently destroyed immediately prior to a physical search of the premises and usually records which are obtained are coded in order to protect the names of controllers and runners.

The informants mentioned in this affidavit have informed agents of the Federal Bureau of Investigation and officers of the New Haven Police Department that they categorically refuse to testify in any court proceedings because of possible retaliatory tactics which might be taken against them.

A similar statement was found to be in substantial compliance with the mandates of §§ 2512(1)(c) and (3)(c) in United States v. Askins, 351 F. Supp. 400, 414 (D.Md. 1972). Further, a comparison of the averments in the Connolly affidavit with narratives upheld in other controlling cases indicates that the defendants' contentions must be rejected. See United States v. Steinberg, ____ F.2d ____ (2 Cir. November 10, 1975); United States v. Falcone, 364 F. Supp. 877, 889 (D.N.J. 1973), aff'd 505 F.2d 470 (3 Cir. 1974), cert denied, 420 U.S. 955 (1975); United States v. Staino, 350 F. Supp. 852 856-857 (E.D.Pa. 1973); United States v. Lanza, 356 F. Supp. 27, 30 (M.D.Fla. 1973); United States v.

Mainello, 345 F. Supp. 263, 873-874 (E.D.N.Y. 1972).

C. In their third ground for suppression, the defendants assail the government's compliance with the requirements for the submission of progress reports and the return and sealing of the wiretaps. On January 15, 1973, Judge Thomas F. Murphy issued the original wiretap order with a termination date of January 30, 1973. Under the provisions of 18 U.S.C. § 2518(8)(a), the government was obligated to return the recordings and to submit a progress report to Judge Murphy upon the expiration period of the order. On January 29, 1973, the government attempted to comply with the statute but Judge Murphy was not in his chambers. Thereupon, the agents requested Chief Judge T. Emmet Clarie to accept the progress report and the recordings for sealing. Judge Clarie contacted Judge Murphy by telephone and it was "agreed orally that the Court sitting here in Hartford should receive this progress report as of today and should also accept the return of the government as of today and seal the original tapes as submitted to the Court." Transcript of Hearing, January 29, 1973, pp. 7-8. Two days later, Judge Murphy entered an order ratifying the actions taken by Judge Clarie.

Under these circumstances there is no merit to the defendants' claim that the wiretap evidence must be suppressed because the return of the progress report and the recordings was accepted by Judge Clarie rather than Judge Murphy. Since Judge Murphy was unavailable, it was

proper for the government to seek the assistance of Judge Clarie in order to file a timely return under 2518(3)(a). Cf. United States v. Poeta, 455 F.2d 117, 122 (2 Cir.), cert. denied, 406 U.S. 948 (1972). In any event, even assuming a procedural error, suppression would be inappropriate. The integrity of the tapes is not questioned and the defendants have failed to demonstrate any prejudice from the purported violation of the statute. Cf. United States v. Chavez, 416 U.S. 562, 574-575 (1974); United States v. Falcone, supra; United States v. Iannelli, 477 F.2d 999, 1002 (3 Cir. 1973); United States v. Poeta, supra; United States v. LaGorza, 336 F. Supp. 190, 194 (W.D.Pa. 1971).

D. The defendants further contend they were not served with timely inventories in violation of 18 U.S.C. § 2518(8)(d). That statute requires that, within a reasonable time but not later than 90 days after the termination of the period of the wiretap order "or extensions thereof", the judge who issued the warrant shall cause an inventory notice to be served on each person named in the order and, in the discretion of the judge, on any other person whose conversation was intercepted.

Here the original wiretap order, naming defendants Valeriano, Brown and Furman, was issued by Judge Murphy on January 15, 1973, with a termination date on or before January 30, 1973. Thus, these defendants argue, the inventories should have been served on or before April 30, 1973. However, on April 25, 1973, in Judge Murphy's absence,

Judge Newman authorized an extension of the original order and the service of the inventories until May 25, 1973. Three days prior to the termination date, Judge Murphy granted a further extension of the order and set July 16, 1973 as the final date for the service of the inventories. The government served the notice inventories on these defendants on July 10, 1973.

Despite defendants' contentions, it seems clear that the government complied with the provisions of § 2518(8)(d). The statute specifically allows postponement of the service of notice as a result of extensions of the original wiretap order. Since the defendants received the notice inventories prior to the deadline date of July 16, 1973, the government was in full compliance with Judge Murphy's May 22, 1973 order. Cf. United States v. Curreri, 363 F. Supp. 430, 435-436 (D.Md. 1973). See also United States v. Valeriano, Magistrate's Docket No. 2 (D. Conn. November 20, 1973) (Newman, J.).

E. Defendants Einsler, Bell, Amendola, and Adams, who were unnamed in the application and order but whose conversations were overheard during the interceptions, also argue non-compliance with § 2518(8)(d). The government concedes that these defendants did not receive full disclosure of all relevant documents and materials until July 3, 1974, two months after the indictment in this case was returned by a grand jury. However, it excuses the delay in service on the ground that these defendants were "unknown"

Appendix X

at the time the wiretap application and order were filed and that, as soon as their identities were confirmed by investigative techniques, they received notice within a reasonable time.

The record before the Court supports the government's position. No evidence has been presented to indicate that defendants Kinsler, Bell, Amendola, and Adams were known to the government, within the meaning of Title III of the Act, so as to require disclosure of their names at the time the wiretap orders were issued and extended by judges of this District during the first six months of 1973. In fact, as late as February 27, 1974, Agent Connolly informed the grand jury investigating this case that the government was awaiting the results of voice exemplars to establish the identities of certain persons suspected of being overheard, and specifically included these defendants within that category. Subsequently, Agent Connolly reported to the grand jury that the voice tests had been concluded and identifications made. Thereupon an indictment was returned on May 3, 1974. Under these circumstances, since probable cause concerning these defendants may properly be found to be lacking until the spring of 1974, the government was not derelict in failing to reveal their names to the judges who issued and extended the wiretap orders and who established dates for the service of notice inventories. See United States v. Kahn, 415 U.S. 143, 155 (1974); United States v. Martinez, 498 F.2d 464, 468 (6 Cir. 1974); United States v.

Tortorello, 400 F.2d 734, 775 (2 Cir.), cert denied, 414 U.S. 666 (1973); United States v. Frizzell, 400 F. Supp. 268, 271-272 (E.D.Tenn. 1975); United States v. Chiarizio, supra, 308 F. Supp. at 867-872.

In any event, even assuming these defendants failed to receive timely inventories, suppression of the evidence would be unwarranted. Not every failure to comply fully with the requirements of Title III renders the interception unlawful. United States v. Chavez, supra. Unlike the statutory requirement concerning authorization for a wiretap, see United States v. Giordano, 416 U.S. 505 (1974), it does not appear that a post-interception inventory is a central or functional safeguard under Title III which, if tardily furnished, mandates suppression. One of the main purposes of the inventory procedure is to provide notice to those who have had their communications intercepted and to afford any aggrieved person the opportunity to pursue an appropriate remedy. Therefore, in the absence of a showing of prejudice, a failure to serve a timely notice does not require suppression. United States v. Rizzo, 402 F.2d 443, 447 (2 Cir.), cert. denied, 417 U.S. 944 (1974); United States v. Wolk, 466 F.2d 1143 (3 Cir. 1972); United States v. Forlano, 358 F. Supp. 56, 58 (S.D.N.Y. 1973). No prejudice has been demonstrated in the instant case. All relevant information, including a complete transcript of the intercepted conversations, has been made available to the defendants for the

purposes of pre-trial motions and defenses at trial. Cf. United States v. Cirillo, 499 F.2d 872, 882-883 (2 Cir.), cert. denied, 419 U.S. 1056 (1974). Moreover, there has been no showing that the government deliberately ignored the notice requirements of the statute or that it failed to file inventories in order to gain a tactical advantage. Compare United States v. Eastman, 465 F.2d 1057 (3 Cir. 1972). To suppress the wiretap evidence under these circumstances "would be to unnecessarily undermine and subvert the legislation." United States v. LaGorga, supra, 336 F. Supp. at 194. See also United States v. Doolittle, 518 F.2d 500, aff'g 507 F.2d 1368, 1371-1372 (5 Cir. 1975).

F. Defendant Bell moves to suppress items seized in a search of his premises located at 23 West Street, New London, Connecticut, on the ground that the warrant was issued without probable cause for two reasons: (1) the informant named in the affidavit was not demonstrated to be "reliable"; and (2) the information obtained from the informant was "stale." The contentions are without merit. The affidavit not only contained a statement that the informant had previously supplied accurate information but also certified to independent corroboration of the informant's story. These factors are sufficient to sustain the constitutional propriety of the issuance of the warrant. Aguilar v. Texas, supra, 378 U.S. at 114; United States v. Sultan, supra, 463 F.2d at 1068-1069; United States v. Dunning, supra, 425 F.2d at 839. Moreover, the underlying circumstances set

forth in the affidavit did not suffer from staleness. The affidavit detailed the on-going, illegal business relationship between defendant Bell and defendant Valeriano, and described the doings of the criminal enterprise just a few days before the search. While it is true that probable cause dwindles with the passage of time when the affidavit refers to an isolated violation, the time element becomes less significant "where the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct. . . ." United States v. Johnson, 461 F.2d 285, 287 (10 Cir. 1972); see also United States v. Harris, 402 F.2d 1115, 1119 (3 Cir. 1973); United States v. Cantor, 323 F. Supp. 561, 566 (E.D.Pa. 1971), aff'd, 470 F.2d 820 (3 Cir. 1972). Viewed in its entirety, the affidavit was sufficient to support the issuance of the search warrant.

C. Defendant Brown moves to suppress her testimony before the grand jury on October 10, 1973, claiming that at the time she was not fully apprised of her rights as required by Miranda v. Arizona, 384 U.S. 436 (1965) and its progeny. Since the government represents that none of the defendants' testimony before the grand jury will be used at trial, the motion is denied, without prejudice.

III. The Discovery Motions

A. With the exception of defendant Valeriano, all the defendants move for the disclosure of the minutes of the grand jury. Since the defendants have demonstrated no

"particularized need", the motions are denied. Rule 6(e), F. R. Crim. P., United States v. Procter & Gamble Co., 356 U.S. 677, 683 (1958); United States v. Budzanoski, 462 F.2d 443, 454 (3 Cir. 1972); cf. United States v. Youngblood, 379 F.2d 365 (2 Cir. 1967). In addition, the defendants' request for an in camera inspection of the grand jury minutes is denied, absent a showing that their Estepa claim possesses any substance. United States v. Ramirez, 462 F.2d 807, 812 (2 Cir.), cert. denied, 414 U.S. 1070 (1973).

D. The defendants' motions for bills of particulars are denied, except that the government shall answer the following requests:

- Paragraph No. 7 under Count One;
- Paragraphs Nos. 7 and 9 under Count Two;
- Nos. 3 and 6 under Overt Acts.

C. The defendant Kinsler's supplemental motion for discovery and inspection is denied; the defendant's argument concerning the authority of the special strike force attorney to appear and present evidence in this case to the grand jury is foreclosed by the ruling of the Second Circuit in In re Subpoena of Persico, 522 F.2d 41 (2 Cir. 1975).

Accordingly, it is ordered as follows:

1. All motions to dismiss are denied.
2. All motions to suppress are denied.
3. The motions for disclosure of grand jury minutes are denied.

4. All motions for discovery and inspection are denied.

5. The motions for bills of particulars are denied, with the exceptions noted hereinbefore.

Dated at New Haven, Connecticut, this 17th day of February, 1976.

Robert C. Zampano
United States District Judge